

## **EXPLANATORY MEMORANDUM TO**

### **The Invasive Alien Species (Enforcement and Permitting) Order (Northern Ireland) 2019**

**2019 No. 159**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department of Agriculture, Environment and Rural Affairs to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. The purpose of the statutory rule is to introduce penalties and sanctions to implement the requirements of Regulation (EU) 1143/2014 of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species.

#### **3. Background**

- 3.1. Regulation (EU) 1143/2014 came into force on 1 January 2015 and imposes strict restrictions on a list of species known as 'species of Union concern'. The aim of the Regulation is to prevent the introduction and spread of certain hazardous plant and animal species.
- 3.2. These are species whose potential impacts across the European Union are such that concerted action across Europe is required. The initial list of 37 species came into force on 3 August 2016. A further 12 species were added to the list and came into force on 2 August 2017 for all these species apart from the Raccoon dog, where they came into force on 2 February 2019.
- 3.3. A further 17 species have been added to the list with the associated restrictions and obligations coming into force on 15 August 2019.
- 3.4. Listing means that it is no longer legal to import these species into the EU without appropriate documentation, keep, bred, sell, transport, use or exchange, reproduce or release into the environment any species listed.
- 3.5. Although Regulation (EU) 1143/2014 has direct application in the UK, some additional national legislation is required to ensure that the measures can be implemented effectively.
- 3.6. Part 1 of the Order sets out introductory provisions concerning commencement, application and interpretation. The coming into operation for the Order has been set to match the common commencement date of 1st December 2019.
- 3.7. Part 2 contains criminal offences, which include breach of the main restrictions in the EU Regulation, as well as ancillary offences, for

example relating to false statements, attempts to commit offences, and obstruction. It also contains provisions relating to offences by bodies corporate, partnerships and unincorporated associations.

- 3.8. Parts 3 and 4 contain defences and penalties respectively. Penalties are set to be consistent with similar penalties contained in existing legislation relating to non-native species.
- 3.9. Part 5 contains enforcement powers available to the Department and authorised persons who will enforce the Order. The Order contains stop and search powers, as well as powers of entry, examination, seizure and sampling.
- 3.10. The Order provides powers for an authorised person to enter premises without a warrant, on strict justification, where there are grounds for suspicion that a specimen is being kept on those premises. Entry without a warrant in this way must take place at a reasonable time. Entry to private dwellings is only permitted with a warrant from a lay magistrate. Notice must be given before entry, whether under warrant or not, unless one of the listed exceptions applies.
- 3.11. Parts 6 and 7 contain permitting and licensing provisions respectively. Permits, which will be issued by the Department, provide for import, keeping and breeding (but not for sale or release) of specimens, for the purposes of research, ex-situ conservation or the production and use of products for the advancement of human health. Permits may also be granted in exceptional circumstances for reasons of compelling public interest, following the procedure set out in Article 9 of the EU Regulation. Specimens covered by a permit must be kept in contained holdings. Licences, which will also be issued by the Department, are available for some activities that would otherwise be prohibited by the EU Regulation, for example for activities undertaken for the purpose of the eradication of a newly-arrived species, or the population control or containment of a widely-spread species. The list of purposes for which such licences can be granted is limited, in order to meet the requirements of the EU Regulation.
- 3.12. Part 8 concerns related legislation, making changes where existing provisions overlap with the controls set out in the EU Regulation. Of particular note are the amendments, contained in Article 28 to the Wildlife (Northern Ireland) Order 1985. These amendments remove the Invasive Alien Species of Union concern from the ambit of the provisions relating to invasive non-native species in Article 15. This is to make the legislation more transparent and easier to use – benefitting the general public as well as enforcers – by bringing all the offences relating to species of Union concern into one place.

#### **4. Consultation**

- 4.1. The former Department of Environment carried out an 8 week public consultation on the proposed penalties which the Department is required to introduce to fulfil its obligation to implement the requirements of Regulation (EU) 1143/2014. A synopsis of the comments received was presented to the AERA Committee on 16 June 2016.

## **5. Equality Impact**

5.1. There are no equality impact implications arising from this Regulations.

## **6. Regulatory Impact**

6.1. The impacts of this Order are not expected to place any direct additional burdens on businesses, charities, voluntary bodies or the public sector.

## **7. Financial Implications**

7.1. The impact of Regulation (EU) 1143/2014 and the Union list on Northern Ireland businesses is deemed to be relatively minor. It is envisaged that species relevant to Northern Ireland on the Union list are both limited in numbers and to the extent they are traded or bred. Therefore, any impact on businesses following the transitional period is likely to be minimal.

## **8. Section 24 of the Northern Ireland Act 1998**

8.1. This Statutory Rule does not contravene Section 24 of the Northern Ireland Act 1998.

## **9. EU Implications**

9.1. This Order implements the requirements of Regulation (EU) 1143/2014.

9.2. Until the UK formally leaves the EU, it still has a legal obligation to comply with EU law and therefore all the EU Regulation rules and regulations apply.

## **10. Parity or Replicatory Measure**

10.1. This Order will ensure parity with legislation being introduced by the other UK administrations.

## **11. Additional Information**

11.1. None..